

# Legislative Fiscal Bureau

## Fiscal Note

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HF 65 – OWI .08 (LSB 1428 HV)

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Fiscal Note Version – New

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### **Description**

House File 65 changes the limit for blood-alcohol concentration while driving a motor vehicle from .10 percent to .08 percent. Under the Bill, a person who drives with a .08 blood-alcohol concentration or higher would violate Section 321J.2, Code of Iowa, the operating while intoxicated (OWI) statute.

### **Assumptions**

1. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
2. Prisoner length of stay, revocation rates, and other corrections' practices and policies will not change over the projection period.
3. There is a six-month lag time from the effective date (July 1, 2003) of the proposed legislation to the date of first entry of affected offenders into the correctional system.
4. Based on a four-state analysis by the National Highway Traffic Safety Administration (NHTSA), in the years following the lowering of the per se blood-alcohol content from .10 percent to .08 percent, there was a 4.0 percent increase in OWI arrests and convictions. Costs associated with more arrests cannot be determined, but are not expected to be significant.
5. The National Highway Traffic Safety Administration's four-year analysis showed there was a 7.0 percent reduction in convictions for Vehicular Homicide and Serious Injury OWIs.
6. Under the Transportation Equity Act of the 21st Century (TEA-21), states that adopt a .08 blood-alcohol content per se law as the legal standard for drunk driving offense are eligible to receive incentive funds. The Transportation Act of the 21st Century (TEA-21) provides a total of \$500 million over a six-year period, beginning in FFY 1998, to qualifying states. Iowa has not yet qualified.
7. Administrative license revocations appeals will increase, however, the increase is not expected to be significant for the Department of Transportation (DOT) or the Department of Inspections and Appeals (DIA).
8. There will be a 4.0 percent increase in OWI-related license revocations, and therefore a 4.0 percent increase in civil penalty fees. (The DOT collects civil penalty fees for each revoked driver's license, upon reinstating the license.)
9. Average jail terms are based on the average jail term imposed for OWI violations.
10. The analysis is based on information obtained from the Justice Data Warehouse, which includes statewide court information. Conviction and penalty information is based on FY 2002 data. Prison admission data from the Adult Corrections Information System was also used.
11. The median cost per case for indigent defense for an OWI First is \$500, an OWI Second is \$1,000, an OWI Third is \$1,000, a Serious Injury OWI is \$1,000, and a Vehicular Homicide OWI is \$3,500. Approximately 50 percent of all OWI First offense convictions are indigent, while 100 percent of OWI Second and Third offense convictions are indigent.
12. The marginal cost per day for state prisons is \$12 per offender. The average length of stay for new admissions for an OWI Third conviction is 5 months, a Vehicular Homicide

conviction is 111 months, and a Serious Injury OWI conviction is 23 months. The average length of stay for re-admissions for an OWI Third conviction is 10 months, a Vehicular Homicide conviction is 16 months, and a Serious Injury OWI conviction is 10 months.

13. The marginal cost per day for probation or parole is \$1.82 per offender. The average length of stay for an OWI First is 14 months, an OWI Second is 19 months, and an OWI Third is 13 months. OWI Third offenders have served time in prison, jail, and residential facilities.
14. Most OWI First offenders are “banked”; i.e., they are not actively supervised. The Department of Corrections’ standard for supervising banked cases is one agent to 750 offenders. The average annual cost of a Parole/Probation Officer II is \$52,000 (salary and benefits).
15. The marginal cost per day for Community-Based Corrections (CBC) OWI treatment facilities is \$23 per offender, with an average length of stay of four to six months. A portion of this cost is offset by offender fees.
16. There are 1,404 CBC facility beds statewide. Of these, approximately 236 beds are dedicated to the OWI residential treatment program. On January 23, 2003, there were 238 OWI offenders in the facility-based OWI treatment program, 55 offenders were waiting to enter the facilities. These offenders may be under CBC supervision, or waiting in prison or jail. The facility-based OWI treatment program is operating at full capacity under current law.
17. Operating While Intoxicated (OWI) Second and OWI Third offenders will be required to attend substance abuse treatment, either at their own expense or through Iowa’s substance abuse managed care system. The average cost per client for substance abuse treatment is \$1,200.
18. The average cost for a jury for 1.5 days for an OWI Second, an OWI Third, a Serious Injury OWI, and a Vehicular Homicide OWI is \$390.
19. The average cost for an OWI First trial ranges from \$58 to \$61 without a jury.
20. The average cost for an OWI Second trial ranges from \$58 to \$61 without a jury, and \$448 to \$451 with a jury.
21. The average cost for an OWI Third trial, Serious Injury OWI trial, and Vehicular Homicide trial is approximately \$160 without a jury, and \$550 with a jury.
22. Average length of stay in county jail for an OWI First is seven days.
23. Average length of stay in county jail for an OWI Second is 16 days.
24. Average length of stay in county jail for an OWI Third is 55 days.
25. The marginal cost per day for county jails is \$15 to \$25.
26. There will be 267 additional admissions for OWI First convictions, 86 additional admissions for OWI Second convictions, and 21 additional admissions for OWI Third convictions. This amounts to the following additional days served:
  - 1,869 additional jail days for OWI First.
  - 1,376 additional jail days for OWI Second.
  - 1,155 additional jail days for OWI Third.

### **CORRECTIONAL IMPACT**

During FY 2004, HF 65 will result in an additional 193 OWI First convictions (serious misdemeanor), 54 OWI Second convictions (aggravated misdemeanor), and 20 OWI Third convictions (Class D felony). During FY 2005 (annualized impact), there will be an additional 386 OWI First convictions, 107 OWI Second convictions, and 40 OWI Third convictions. Also during FY 2004 and FY 2005, there will be one less Vehicular Homicide OWI conviction (Class B) each year and one less Serious Injury OWI conviction (Class D) each year.

During FY 2004, there will be an additional 265 people convicted under the proposed legislation.

These 265 convicted offenders will be sentenced as follows: 5 to prison, 18 to CBC facilities, 125 to probation, and 187 to jail. Certain offenders will receive a split sentence, such as jail and probation.

During FY 2005 (annualized impact), there will be an additional 531 people convicted under the proposed legislation. These 531 convicted offenders will be sentenced as follows: 12 to prison, 43 to CBC facilities, 290 to probation, and 374 to jail. Certain offenders will receive a split sentence, such as jail and probation.

Admissions to the State prison system will increase by 5 during FY 2004, by 12 during FY 2005, and by 13 in FY 2008. The prison population will increase by four during FY 2004, by five during FY 2005, and by two in FY 2008.

Admissions to CBC residential treatment facilities will increase by 18 during FY 2004, and 43 new admissions each year thereafter. This will increase the number of offenders on waiting lists, which will increase the need for additional OWI treatment beds. The increase in admissions to CBC facilities will increase the number of OWI Third offenders being revoked to prison for failing the treatment program. It is estimated that four of these offenders will be revoked in FY 2005. Of these, two will be held in jail pending the revocation hearing. Admissions to street supervision will increase by 125 during FY 2004, and 290 each year thereafter.

The number of new admissions to OWI residential treatment facilities in FY 2005 (43) may result in the CBC system shifting beds from the Work Release or Residential Programs to the OWI treatment program. If such a change occurs, the prison population may increase, as there will be fewer CBC beds available.

Admissions to county jails will increase by 187 during FY 2004, by 374 during FY 2005, and by 380 in FY 2008.

## **FISCAL IMPACT**

The estimated net fiscal impact of HF 65 to the State General Fund is an increase in expenditures of \$257,000 during FY 2004, and an increase in expenditures of \$523,000 during FY 2005. The estimated net fiscal impact of HF 65 to local governments is an increase in expenditures of between \$64,000 and \$108,000 in FY 2004 and each year thereafter. A breakdown of expenditures and revenues follows.

### **State Government Impact**

#### ***Expenditures***

The estimated increase in expenditures for FY 2004 is \$371,000 and \$796,000 in FY 2005. A detailed breakdown of expenditures is as follows:

|                                | <u>FY 2004</u>    | <u>FY 2005</u>    |
|--------------------------------|-------------------|-------------------|
| Dept. of Corrections - Prisons | \$ 9,000          | \$ 22,000         |
| CBC (treatment)                | 62,000            | 148,000           |
| County confinement             | Minimal           | Minimal           |
| Probation and parole           | 61,000            | 147,000           |
| Courts                         | 32,000            | 64,000            |
| Indigent defense               | 118,000           | 239,000           |
| Substance abuse treatment      | 89,000            | 176,000           |
| DPS - Iowa State Patrol        | Minimal           | Minimal           |
| <b>Total</b>                   | <u>\$ 371,000</u> | <u>\$ 796,000</u> |

Additional FTEs will be needed for probation and parole statewide: 1.16 FTE positions in FY 2004 and 2.8 FTE positions in FY 2005. The First, Third, Fifth, and Sixth CBC District Departments will experience the most increase in demand for additional staff.

## **Revenues**

Total revenues for mandatory criminal and civil fines and surcharge fees are estimated to increase \$114,000 to the General Fund and \$35,000 to the Victim Compensation Fund in FY 2004; and \$273,000 to the General Fund and \$72,000 to the Victim Compensation Fund in FY 2005. A detailed breakdown of revenues follows:

|                          | <u>FY 2004</u> | <u>FY 2005</u> |
|--------------------------|----------------|----------------|
| State General Fund       | \$ 114,000     | \$ 273,000     |
| Victim Compensation Fund | 35,000         | 72,000         |

## **Local Government Impact**

### **Expenditures**

Local governments will experience increased costs for operating jails under HF 65. Total increased statewide costs for local jails are estimated to be \$66,000 to \$110,000 more annually than current law.

The increase in the number of arrests is not anticipated to have significant fiscal impact on local law enforcement. Resources for enforcement may be diverted from other duties.

### **Revenues**

Total revenues to the counties' General Fund are estimated to increase \$1,000 during FY 2004 and \$3,000 in FY 2005 and each year thereafter. Revenues include criminal surcharge fees.

## **Federal Funds Impact**

The estimated fiscal impact of enacting HF 65 during the 2003 Legislative Session is expected to result in increased revenue from federal incentive funds. The incentive funds can be used for any projects eligible for assistance under 23 U.S.C., which include highway construction and traffic safety projects. Of the incentive funds received by the State, and of the amount to be obligated by the DPS, at least 40.0 percent must benefit local programs.

If Iowa enacts HF 65 by July 15, 2003, and begins enforcement by September 30, 2003, the State will receive between an estimated \$1.4 and \$2.1 million in one-time incentive funds. No state matching funds are required for the incentive grant.

As additional states adopt the .08 standard, Iowa's share of the incentive funds decrease. As of January 2003, 34 states have adopted .08 per se laws and are in compliance with Section 163. Sixteen states, including Iowa, are not in compliance.

The following table illustrates estimated incentive funding amounts Iowa could receive in FFY 2003, depending on the number of states with a .08 per se law at the time Iowa's law is enacted.

| <u>Number of States<br/>Enacting .08<br/>FFY 2003</u> | <u>Iowa Incentive Funds<br/>FFY 2003</u> |
|---|--|
| Iowa only   | \$2.1 million                            |
| Iowa and two other states                             | \$2.0 million                            |
| Iowa and four other states                            | \$1.9 million                            |
| Iowa and eight other states                           | \$1.7 million                            |
| Iowa and 12 other states                              | \$1.5 million                            |
| All remaining 16 states                               | \$1.4 million                            |

Note: Estimates will vary depending on the number and size of states that enact .08.



**Sources**

Department of Human Rights (CJJP)  
Department of Transportation  
Department of Corrections  
Department of Public Safety  
Department of Inspections and Appeals  
State Public Defender's Office  
Supreme Court  
National Conference of State Legislatures  
National Highway Traffic Safety Administration

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February 6, 2003

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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